

REMARKS

I. Restriction

In the Office Action, Examiner Phan required a two-way restriction in the instant patent application. The applicant respectfully submits that such a restriction is not appropriate here.

Examiner Phan stated in the Office Action that invention I is unrelated to invention II and that invention I and invention II are subcombinations that are separately usable. Examiner Phan did not provide further grounds for the restriction.

In response, the applicant provides an argument in the alternative. The applicant submits that a restriction is not appropriate. In addition, because a proper response requires an election, the applicant elects invention II with traverse.

1. The Restriction Arguments Are Not Appropriate

A restriction is inappropriate here because the inventions are not so unrelated or separately usable subcombinations, as the Examiner argues. Each of the Examiner's arguments is addressed separately below.

a. Invention I and Invention II are Not "Unrelated" As Defined in the MPEP

In the Office Action, the Examiner initially stated that invention I and invention II are unrelated. In paragraph 2 of the Office Action, the Examiner stated that "[i]nventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01)." The sections of the MPEP cited by the Examiner present examples of inventions contemplated by that section to require a restriction:

(A) Two different combinations, not disclosed as capable of use together, having different modes of operation, different functions or different effects are independent. An article of apparel such as a shoe, and a locomotive bearing would be an example. A process

of painting a house and a process of boring a well would be a second example.

(B) Where the two inventions are process and apparatus, and the apparatus cannot be used to practice the process or any part thereof, they are independent. A specific process of molding is independent of a molding apparatus which cannot be used to practice the process.

MPEP § 806.04 (Eighth Edition) (Emphasis added). The MPEP similarly provides "a necktie and a locomotive bearing" as examples of independent inventions in MPEP § 808.01 in Examiner Note 1. All of the applicant's claims relate to aspects of collecting and analyzing location data and call quality data in real-time over a wireless communications network. Moreover, the applicant's specification makes clear that the claimed inventions are capable of being used together, contrary to the cited MPEP sections.

The Examiner first indicated that inventions I (i.e., claims 1-5 and 12-22) and II (i.e., claims 6-11 and 23-25) are unrelated by arguing that a method for location monitoring for non-emergency (i.e., non-911) calls at a communications network has nothing to do with a method for determining the position of a radiotelephone which has made an emergency call (i.e., 911). However, the claims under invention II do not deal with a method for determining the position of a radiotelephone which has made an emergency call. Instead, these claims deal with, in part, determining location "with a resolution required by enhanced 911" or "in compliance with enhanced 911 requirements." Claims 6-11 and 23-25 are directed to collecting call data and location data for analyzing network performance for both emergency and non-emergency calls. For example, claims 6, 9, and 23 recite, among other limitations, the use of "enhanced 911 ("E911")" services or requirements. The specification indicates that "the location server [E911 server] 110a obtains location information for some or all mobile units 106, regardless of whether the mobile unit has placed a 911 call." Page 5, Paragraph 22. An E911 server monitors location data and call data for non-emergency calls in addition to emergency calls. Thus, both inventions I and II deal with monitoring location data and call data for non-emergency calls. For at least this reason, inventions I and II are capable of use together and so a restriction is improper.

In addition, invention I (i.e., claims 1-5 and 12-22) and invention II (i.e., claims 6-11 and 23-25) have similar modes of operation and function. Claims 1-5 of invention I and claims 6-11 of invention II discuss querying a mobile unit for call data and location data based on a predetermined set of criteria, as well as processing the call data and location data. Claim 1 of invention I and claims 6 and 9 of invention II recite, among other limitations, the use of a "query" which includes a request for "call data and location data." Claims 12-22 of invention I and claims 6-11 and 23-25 of invention II discuss a mobile unit with a location system for monitoring network performance. Claim 12 of invention I and claims 6, 9, and 23 of invention II recite, among other limitations, the use of a "mobile unit," as well as "location data" for describing the location of the mobile unit. The applicant believes that the claim sets of invention I and invention II are related. For at least this reason, inventions I and II are effectively capable of use together as recited by the MPEP, and so a restriction is improper.

Consequently, the argued restriction is improper because inventions I and II are disclosed as capable of use together. Thus, all claims should be examined together.

2. If a Two-Way Restriction is Appropriate, Applicant Elects Invention II

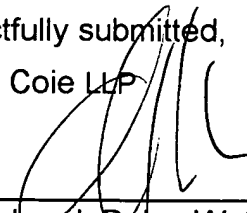
In the event the Examiner chooses to continue the present restriction requirement, the applicant elects, with traverse, invention II comprising claims 6-11 and 23-25.

II. Conclusion

If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 359-6384.

Respectfully submitted,
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